

JUL 10 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NUR ALAMIN,

Defendant - Appellant.

No. 01-50278

D.C. No. CR-00-01001-MLR-01

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted June 3, 2003
Pasadena, California

BEFORE: REINHARDT, O'SCANLAIN and FISHER, Circuit Judges.

Appellant Nur Alamin appeals his conviction on two counts of involuntary servitude, in violation of 18 U.S.C. § 1584, two counts of harboring and concealing and illegal alien, in violation of 8 U.S.C. § 1324(a)(1)(A)(III), and one count of conspiracy to commit involuntary servitude and to harbor and conceal an

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illegal alien, in violation of 18 U.S.C. §§ 371, 1584 and 8 U.S.C. § 1324(a)(1)(III).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The relevant facts are known to the parties and are discussed here briefly and only as necessary.

Alamin contends that the district court violated his due process right to an impartial judge when the court improperly examined 12 out of 16 defense witnesses, while examining none of the government's witnesses. We review the court's examination of witnesses for abuse of discretion. *United States v. Laurins*, 857 F.2d 529, 537 (9th Cir. 1988).

"A trial judge is more than an umpire, and may participate in the examination of witnesses to clarify evidence, confine counsel to evidentiary rulings, ensure the orderly presentation of evidence, and prevent undue repetition." *Id.* A trial judge's participation in trial deprives the defendant of a fair trial and justifies reversal if "the record discloses actual bias . . . or leaves the reviewing court with an abiding impression that the judge's remarks and questioning of witnesses projected to the jury an appearance of advocacy or partiality." *United States v. Parker*, 241 F.3d 1114, 1119 (9th Cir. 2001) (internal quotation marks omitted).

This is a close case, but ultimately we conclude that the district court's questioning of witnesses does not warrant reversal. The court's examination of most of the defense witnesses consisted of questions that clarified earlier testimony and did not reflect bias or incredulity. Although the court's examination of four witnesses – Nashima Chowdhury, Nawshad Azad, Shelly Chowdhury and the defendant himself – included questions that appear improper, as they seem designed to undermine the witnesses' credibility, those questions comprise only a small portion of the trial transcript, and they were relatively interspersed throughout the presentation of the defense case. The court did not interrupt, threaten or scold the witnesses, and it waited until Alamin's counsel was finished with his redirect examination before beginning its own questioning. *Compare United States v. Pena-Garcia*, 505 F.2d 964 (9th Cir. 1974); *United States v. Saenz*, 134 F.3d 697 (5th Cir. 1998). Despite our discomfort with some of the court's questions, the record as a whole does not leave us with an abiding impression that the court's examination of Alamin's witnesses conveyed the appearance of advocacy or partiality. *See Parker*, 241 F.3d at 1119.

We also reject Alamin's challenges to the court's evidentiary rulings, which we review for abuse of discretion. *United States v. Bensimon*, 172 F.3d 1121, 1128 (9th Cir. 1999). Despite the court's in limine ruling excluding evidence of

Rabiya Akhter's medical condition, the jury heard testimony that (1) Rabiya was seriously ill and required a blood transfusion, (2) she had been hospitalized, (3) Shaefeli Akhtar outweighed her by more than 100 pounds and (4) Shaefeli returned to live with Alamin and Rabiya because of Rabiya's illness. Any additional details about Rabiya's medical condition were irrelevant, and their exclusion was not an abuse of discretion.

The district court also did not abuse its discretion in disqualifying Alamin's son as a sanction for violating the court's sequestration order, as the court found that Alamin had cooperated in the violation. *See United States v. Hobbs*, 31 F.3d 918, 922 (9th Cir. 1994). Even if this finding was in error, the exclusion of the witness's testimony was harmless. The jury heard testimony from several witnesses about the relationship between Alamin and Shaefeli, and it is unlikely that the additional testimony of Alamin's young son – who would have been recounting events that occurred when he was between the ages of four and nine years old – would have materially affected the jury's verdict. *See United States v. Seschillie*, 310 F.3d 1208, 1214 (9th Cir. 2002).

Finally, we reject Alamin's claim of cumulative error. If the district court erred at all at Alamin's trial, it did so only by excluding the testimony of Alamin's

son, and one error is insufficient to trigger a cumulative error analysis. *See United States v. Geston*, 299 F.3d 1130 (9th Cir. 2002)

The judgment of the district court is **AFFIRMED**.